



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,532	01/30/2004	Robert G. Whirley	1880-17 RCE III	8638
82865	7590	01/11/2010	EXAMINER	
Hoffmann & Baron LLP 6900 Jericho Turnpike Syosset, NY 11791		ART UNIT		PAPER NUMBER

DATE MAILED: 01/11/2010

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10769532	1/30/2004	WHIRLEY ET AL.	1880-17 RCE III

EXAMINER

Thomas J. Sweet

ART UNIT	PAPER
----------	-------

3774 20100107

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The appeal brief is defective based on section IV which states "In response to the final rejection mailed May 22, 2009, a Notice of Appeal was filed on August 21, 2009 without further amendments or arguments. In addition, no further amendments have been presented after the filing of this appeal." An after final argument date 07/22/2009 appears in the file. The Advisory Action mailed 8/12/2009 is material to the Appeal having placed addition arguments and extrinsic evidence on the record which establishing that PEG is miscible in body fluid and does not rely of tissue contact for elution as argued. The content of the Advisory action appears below.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). regarding official notice. the rejection is two pronged there is both official notice and evidence. the official notice was not addressed so it is admitted prior art. the Examiner points to both Rhee et al and Shukla (6432438,example 15) as extrinsic evidence demonstration that is well known to use PEG as a means of drug delivery. Regarding the teachings of Rhee et al, the disclosure clearly stated that PEG is hydrophilic and as the extrinsic evidence of (6432438,example 15) releases drugs because it is hydrophilic and completely miscible in water (or body fluid since that are water based)

/Thomas J Sweet/
Primary Examiner, Art Unit 3774